

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TIMOTHY KIMMERLING,

Plaintiff,

v.

INTERNATIONAL COMPUTER
SYSTEMS, INC. *also known as* First
Collection Services,

Defendant.

CIVIL ACTION FILE NO.

1:16-cv-02739-TWT-CMS

FINAL REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff's failure to comply with a lawful order of this court.

The complaint in the above-styled case was filed on July 28, 2016. [Doc. 1, Compl.]. The recently revised Federal Rule of Civil Procedure 4(m) requires service of the summons and complaint upon the defendant to be made within 90 days after the filing of the complaint. Fed. R. Civ. P. 4(m). Rule 4(m) provides, in pertinent part, that if a defendant is not served within 90 days after the complaint is filed, the court on motion or on its own after notice to the plaintiff, must dismiss the action without prejudice against that defendant. Fed. R. Civ. P. 4(m).

Local Rule 41.3 provides that the court may, with or without notice to the parties, dismiss a civil case for want of prosecution if a plaintiff or the plaintiff's attorney shall, after notice, fail or refuse to obey a lawful order of the court in the case. LR 41.3(A)(2), NDGa.

On November 15, 2016, after more than 90 days had passed with no proof of service being filed with the court, I issued an order to show cause in writing, within ten days of the date of my order, as to why this case should not be dismissed for failure to effect service of process and want of prosecution pursuant to Fed. R. Civ. P. 4(m) and Local Rule 41.3, NDGa. The Clerk was **DIRECTED** to resubmit this matter to me at the expiration of the referenced time period.

It is now December 5, 2016, and the clerk has resubmitted the matter. The docket indicates that Plaintiff has never responded to my order to show cause. There is also no indication that Defendant was ever properly served. For these reasons, I RECOMMEND that this case be dismissed for failure to effectuate service of process, pursuant to Fed. R. Civ. P. 4(m), and want of prosecution, pursuant to Local Rule 41.3.

IT IS SO RECOMMENDED, this 5th day of December, 2016.

A handwritten signature in blue ink, reading "Catherine Salinas". The signature is fluid and cursive, with the first name "Catherine" and last name "Salinas" clearly distinguishable.

CATHERINE M. SALINAS
UNITED STATES MAGISTRATE JUDGE